IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

MFA.No. 832 of 2000

OPMV.1378/1989 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/2ND RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD., KOTTAYAM REP. BY THE ASST. MANAGER, MOTOR THIRD PARTY CLAIMS CELL, KOCHI REGIONAL OFFICE, METRO PALACE, OPPOSITE NORTH RAILWAY STATION, ERNAKULAM.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3 & 6:

1. NALINI, W/O KARTHIKEYAN, KANDATHIL PARAMBIL HOUSE, CHEMBU, VAIKOM.

2. BABU, S/O KRISHNAN, VADAKARA HOUSE, THALAYOLAPARAMBU, KOTTAYAM DISTRICT.

3. BAIJU ALIAS KUTTAI, S/O KRISHNAN, DO. DO.

4. K.J.MATHEW, KOCHIRAYIL P.O., KADAVOOR (DELETED).

5. VIJAYAN, VIJESH BHAVAN, PADINJAREKARA.

6. UNITED INDIA INSURANCE CO. LTD., TRIPUNITHURA.

(DELETED AS PER ORDER DT. 21.12.01 ON CMP 8327/01)

BY ADV. SRI.GEORGE KARITHANAM VARGHESE
SMT.P.A.REZIYA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

C.M.P.No.4602 of 2000 &

M.F.A.No. 832 of 2000

JUDGMENT

Koshy, J.

This is a petition to condone the delay of 155 days in filing the appeal by the Insurance Company. The first respondent/claimant, while travelling in a jeep, met with an accident and suffered injuries. There was head on collusion with a lorry. The appellant is the insurer of the jeep. Only Rs.25,000/- was awarded by the Tribunal to the first respondent. The contention of the appellant is that the jeep, in which the claimant was travelling, is a goods vehicle and since the accident occurred under the old Act, the Insurance Company is not liable to pay the amount. According to the Tribunal, the first respondent was carrying her own goods. The Tribunal also found that the drivers of both the vehicles were involved and

therefore, the liability for payment of compensation was fixed equally on them. Therefore, the appellant Insurance Company is liable to pay only Rs.12,500/- with interest. The only ground taken for condonination of delay is the official delay in getting a legal opinion. That can be placed in every case. If the appeal is allowed, the insured will be liable. The insured died on 9.9.1994, much before presenting the appeal in 2000 and petitions to implead the legal heirs and setting aside the abatement are filed in October 2001. The above petitions were dismissed for default. Hence, the delay condonation petition is liable to be dismissed as abated. Considering the megre amount involved in the case and the fact that the owner of the jeep died before awarding of compensation and no valid grounds are given to condone the delay, we are of the view that delay need not be condoned and therefore, the delay petition is dismissed. Consequently, the appeal is

also dismissed. We are not expressing any opinion regarding the merits in the connected case. The appellant will be free to contest the above on its own merits.

(J.B.Koshy, Judge)

31st May, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 832 of 2000

JUDGMENT

31st May, 2007